

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

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2012 JUL 24 A United States District Court
District of New Hampshire
JUL 24 A 11:11

United States of America
V.
BRIAN EDWARD MAHONEY

CASE NO. 1:11-CR-06-JL

MOTION OBJECTING TO CIVIL COMMITMENT

NOW COMES, the DEFENDANT BRIAN MAHONEY, PRO SE AND RESPECTFULLY MOVES this HONORABLE COURT to GRANT the DEFENDANT'S OBJECTION to be COMMITTED if the COURT FINDS him INCOMPETENT to STAND TRIAL. I STATE AS FOLLOWS:

THE DUE PROCESS CLAUSE ESSENTIALLY DOES GUARANTEE that the GOVERNMENT will NOT IMPRISON OR OTHERWISE PHYSICALLY RESTRAIN A PERSON EXCEPT IN ACCORDANCE WITH FAIR PROCEDURES. SEE J. NOWAK, R. ROTUNDA AND J. YOUNG, CONSTITUTIONAL LAWS SECTION 13.4 AT 459 (3d ed. 1986).

THE COURT HELD UNANIMOUSLY IN ADDINGTON V. TEXAS, 441 U.S. 418, 99 S.Ct. 1804, 60 L.Ed 2d 323 (1979). FOR EXAMPLE, THAT EVEN A PREPONDERANCE OF THE EVIDENCE WILL NOT SUPPORT THE INVOLUNTARY COMMITMENT OF AN ADULT TO A PSYCHIATRIC INSTITUTION. INSTEAD THE NEED FOR SUCH COMMITMENT MUST BE SHOWN BY CLEAR AND CONVINCING EVIDENCE, THAT A DEFENDANT IS UNABLE TO UNDERSTAND THE NATURE AND CONSEQUENCES AGAINST HIM.

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THE DUE PROCESS ALSO REQUIRES THE GOVERNMENT WHEN IT DEPRIVES AN INDIVIDUAL OF LIBERTY, TO FETTER HIS FREEDOM IN THE LEAST RESTRICTIVE MANNER. EVEN WHEN A GOVERNMENT PURPOSE IS LEGITIMATE AND SUBSTANTIAL, THAT PURPOSE CANNOT BE PURSUED BY MEANS THAT BROADLY STIFLE FUNDAMENTAL PERSONAL LIBERTIES WHEN THE END CAN BE MORE NARROWLY ACHIEVED. SEE APTHEKER V. SECRETARY OF STATE, 378 U.S. 500, 508, 84 S.Ct. 1659, 1665, 12 L.Ed. 2d 992 (1964), (quoting SHELTON V. TUCKER, 364 U.S. 479, 488, 81 S.Ct. 247, 252, 5 L.Ed. 2d 231 (1960)).

DISCRETIONARY OR MANDATORY IS THE ISSUE FOR THE COURT TO DECIDE IS HOW SECTION 4241(d) SHOULD BE INTERPRETED. THERE ARE TWO POSSIBLE READINGS OF THIS STATUTE. ① THE FIRST WOULD BE MANDATED, IN ANY CASE WHERE THE COURT FINDS A DEFENDANT INCOMPETENT THAT IT COMMIT THE DEFENDANT TO THE CUSTODY OF THE ATTORNEY GENERAL. THE SECOND READING THE ONE ADOPTED, WOULD REQUIRE THE COURT TO COMMIT THE DEFENDANT TO THE CUSTODY OF THE ATTORNEY GENERAL FOR UP TO FOUR MONTHS ONLY IF THERE IS A PROBABILITY THAT THERE WILL BE A CHANGE IN THE DEFENDANT'S MENTAL CONDITION. THE GOVERNMENT MOVED PURSUANT TO 18 U.S.C. SECTION 4241 ON APRIL 29, 2012. THIS DEFENDANT WAS SENT TO THE FEDERAL MEDICAL CENTER IN DEVENS, MASSACHUSETTS, WHERE THE B.O.P. FIRST COMPETENCY HEARING WAS

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HELD ON APRIL 29, 2011 TILL JUNE 23, 2011 AND SINCE THE B.O.P. ARE EXPERTS ON COMPETENCY HEARING AND MY PSYCHOLOGICAL DR. KISSIN FOUND ME VERY COMPETENT TO STAND TRIAL. THE COURT STATED THAT IT BELIEVED "THE BUREAU OF PRISONS CAN GIVE ME A BETTER COMPETENCY HEARING THAN A PRIVATE PSYCHOLOGICAL EXAMINATION. THE CONDITIONS OF CONFINEMENT OF SUCH AN UNCONVICTED PERSON ARE "ESSENTIALLY THE SAME" AS THOSE CONVICTED AND WHO WERE CONVICTED OF A CRIME.

I WAS GIVEN ON JULY 18, 2011 A CERTIFICATION OF COMPETENCY AND IT WAS SENT TO THE CLERK OF COURT AND DIRECTLY SENT TO THE HONORABLE JUDGE JOSEPH N. LA PLANTE, BY WARDEN J. GRONDOLSKY CLEARLY AND SUFFICIENT TO AUTHORIZE THE COURT IN ITS DISCRETION TO PROCEED TO TRIAL THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL, AND THIS WAS DONE BY B.O.P.

ON AUGUST 13, 2011 MY ATTORNEY OBJECTED TO ME BEING COMPETENT BY THE B.O.P. AND I DID OBJECT TO MY ATTORNEY OBJECTING, BECAUSE I WANTED TO PROCEED PRO SE, AND JUDGE JOSEPH N. LA PLANTE COURT-ORDER ME TO A SECOND COMPETENCY HEARING IN WHICH I OBJECTED TO SINCE I WAS FOUND COMPETENT BY DR. KISSIN WHO WORKS FOR THE B.O.P., AND I WOULD RECEIVE A BETTER COMPETENCY HEARING BY THE B.O.P., AND SINCE WARDEN GRONDOLSKY GAVE A CERTIFICATION THAT I WAS COMPETENT TO STAND TRIAL, I SHOULD NOT BE SUBJECT TO ANOTHER.

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ON DECEMBER 12, 1952 DR. SILK ACTING SUPERINTENDENT OF THE SAINT ELBETH HOSPITAL CERTIFIED IN A LETTER TO THE CLERK OF COURT THAT DEFENDANT HAS RECOVERED AND RESTORED, AND DISCHARGED TREATMENT FROM FEDERAL MEDICAL HOSPITAL, AND ADDRESS TO THE JUDGE HE WAS COMPETENT TO STAND TRIAL. GUNTHER V. UNITED STATES, 94 U.S. App. D.C. 243, 215 F.2d 493 (1954).

DEFENDANT WHO PREVIOUSLY WAS COMMITTED TO A MEDICAL FACILITY UNDER 18 U.S.C. § 4241 ARGUED HIS ENTITLEMENT TO AN ADDITIONAL COMPETENCY HEARING UPON BEING CERTIFIED BY THE MEDICAL'S FACILITY PSYCHIATRIC WAS NOT ENTITLED TO ANOTHER COMPETENCY HEARING AFTER BEING CERTIFIED BY WARDEN. SEE UNITED STATES V. RICHARD L. CLARK, 617 F.2d 180, 1980 U.S. App. LEXIS 18572 NO-79-1287.

DEFENDANT'S COUNSEL ATTORNEY PAUL J. GARRITY ASKED FOR ANOTHER COMPETENCY HEARING OVER MY OBJECTION ON AUGUST 13, 2011, THAT LED THIS DEFENDANT TO TWO INEFFECTIVE ASSISTANCE OF COUNSEL. SEE BRUCE BELTON V. UNITED STATES, D.N.H. 113 (JULY 15, 2010) (ALSO SEE STATE OF NEW HAMPSHIRE V. EMERY). IN THE BELTON ISSUE DEFENDANT ASKED FOR A COMPETENCY HEARING, BUT ATTORNEY GARRITY NEVER ASKED THE COURT FOR A COMPETENCY HEARING ON BEHALF OF BRUCE BELTON. THIS DEFENDANT HAS AGAIN FILED A ATTORNEY DISCIPLINE REQUEST FOR THE SECOND TIME WITH THE NEW HAMPSHIRE SUPREME COURT.

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While the issues before us turn on interpretation of the insanity DEFENSE REFORM ACT OF 1984, 18 U.S.C. Section 20, 4241-47 (Supp. III 1985), AND A Companion Statute ENACTED AT THE SAME TIME, THE Bail REFORM ACT OF 1984, 18 U.S.C. SECTION 3141-56 (Supp. III 1985). BOTH OF WHICH WERE PART OF THE COMPREHENSIVE CRIME CONTROL ACT OF 1984, Pub. L. 98-473, TITLE II SECTION 406 OCTOBER 12, 1984, 98 STAT. 2067, AND THE RULES OF FEDERAL CODE OF CRIMINAL PROCEDURE, THESE PROVISIONS MUST BE READ AGAINST THE BACKGROUND OF THE CONSTITUTIONAL PROTECTION FOR individual LIBERTY. UNITED STATES V. THIER, 801 F.2d 1463, 1466-68 (5th Cir. 1986) ALSO UNITED STATES V. SALEM, 794 F.2d 64, 71-75 (2d Cir. 1986) (CERT. GRANTED) 479 U.S. 929, 107 S.Ct. 397, 93 L.Ed 2d 351 (1986).

DEFENDANT IS ENTITLED TO OR PURSUANT TO SECTION 4246 (F) CONDITIONAL DISCHARGE, DEFENDANT DOES NOT HAVE MENTAL DISEASE. "DEFINITION" OF "MENTAL ILLNESS" - MEANS MENTAL DISEASE TO SUCH EXTENT THAT A PERSON SO AFFLICTED REQUIRES CARE AND TREATMENT FOR HIS OWN WELFARE, OR THE WELFARE OF OTHERS OR THE COMMUNITY. (Emphases added) HUMPHREY V. Cady, 405 U.S. 504. DEFENDANT IF RELEASE WOULD GO BACK TO HIS OWN DOCTORS AND AT CHESHIRE COUNTY JAIL, DEFENDANT IS RECEIVING HIS MEDICATION'S AND TREATMENT FROM OUTSIDE DOCTOR'S REQUEST.

WHEREFORE, DEFENDANT PRAYS THAT HIS OBJECTION IS GRANTED AND RETURN TO HIS OUTSIDE TREATMENT ON RELEASE. RESPECTFULLY SUBMITTED, Brian Malny PRO SE

Please Clerk I team

It is your job to be fair, anyone can win under the Court, Judge, Prosecutors and you
I am staying abuse power

This is to let you know that I have filed four motions that have not even been ordered by this Court.

- ① Motion To Dismiss, Document 88
- ② Motion To Dismiss New Interim Rule
- ③ Motion To Dismiss Counsel and Proceed Prose
- ④ Motion to Stay Pending appellate review
- ⑤ Motion objecting to another's competency hearing under 18 U.S.C.S. 4241(d), and I am sure you have to answer all these motions as well.